IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 31698 of 2006(S)

OA.523/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:
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1. SR.SUPERINTENDENT OF POST OFFICES,
ALUVA DIVISION, ALUVA-683 101.

2. UNION OF INDIA REPRESENTED BY
IST SECRETARY, MINISTRY OF COMMUNICATION,
NEW DELHI.

BY ADV. SRI.VARGHESE P. THOMAS, CGSC

RESPONDENTS:
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1. K.P.KRISHNANKUTTY NAIR,
S/O.LATE SANKUNNY PILLAI, GROUP D,
OFFICE OF THE SR.SUPERINTENDENT OF POST OFFICES,
ALUVA DIVISION, ALUVA, RESIDING AT KEEPADATHIL (H)
ALMURIKKARA P.O., VIA KOOVAPPADY, PERUMBAVOOR.

2. V.K.REMANI, GROUP D ALUVA HEAD QUARTERS,
ALUVA- 683 101.

BY ADV. SRI.M.A.SHAFIK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF OA 523/03 FILED BEFORE THE CAT, ERNAKULAM BENCH

EXT.P2(A)-TRUE COPY OF REPLY STATEMENT DATED 19.8.2003 IN OA 523/03

EXT.P2(B)-REJOINDER DATED 26.6.2004 FILED BY THE APPLICANT

EXT.P2(C)-TRUE COPY OF ADDITIONAL REPLY STATEMENT DATED 3.8.2004 IN OA 523/2003

EXT.P2(D)-TRUE COPY OF REPLY STATEMENT DATED 10.3.2006 IN OA 523/03

EXT.P3-TRUE COPY OF ORDER DATED 30.8.2006 OF THE CAT, ERNAKULAM BENCH IN OA 523/2003

// TRUE COPY //

P.S. TO JUDGE

J.B. Koshy & T.R. Ramachandran Nair, JJ.

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the Tribunal. As per Annexure A2 order of the Tribunal, the above O.A. was allowed directing the respondents to fillup the existing vacancies in Group D in Aluva division after taking into consideration various aspects including whether there had been inaction on the part of the official respondents in filling up the vacancies.

3. It is stated that the above order was challenged before this court in O.P.No.25172/1998 which was disposed of by a Division Bench by Annexure A3 judgment. The plea raised therein apparently was that the recruitment rules are pending amendment for justifying the delay in filling the vacancies and the Division Bench held that in the absence of statutory rules, administrative orders can govern the field. Subsequently, departmental instructions were issued as evidenced by Annexures A4 and A5 and ultimately the first respondent was posted as Group D with effect from 17.10.2000. The applicant therefore claimed that he is eligible and entitled to get notional seniority in the cadre of Group D in Aluva Division with effect from 1.3.1998 and further sought consequential directions.

4. The Tribunal in Ext.P3 order, considered the matter in detail and declared that the applicant is entitled to be appointed as Group D with effect from 1.3.1998 but he shall not be entitled for any arrears of salary from 1.3.1998 to 16.10.2000.

5. We heard the counsel on both sides.

6. The facts leading to the case shows that in Annexure A2 order there was a direction in favour of the applicant which was upheld by this court by Annexure A3 judgment. In the order Annexure A2 the Tribunal had directed the petitioners herein to consider the contention of the applicant that the delay in filling up the vacancy had resulted in irreparable injury to the applicant as he would lose the length of service required for being eligible for pension.

In the light of the above binding directions, due consideration ought to have been made as regards the eligibility of the applicant for promotion with effect from the date of occurrence of the vacancy. Tribunal has rightly rejected the claim of the first respondent for back wages. In the light of the above facts, the Tribunal was of the view that the applicant should have been appointed against the vacancy which arose on 1.3.1998 and not from the date of Anneuxre A7 letter. The delay if any in effecting promotion was not attributable to him.

7. We find no reasons to interfere with the above order of the Tribunal. At any rate, the same cannot be said to be so perverse warranting

interference in exercise of the power under Article 227 of the Constitution of India. Hence, the writ petition is dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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